



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Robert Rubio

OCT 24 2006

Los Angeles, CA 90041

RE: MUR 5849
Robert Rubio

Dear Mr. Rubio:

On October 17, 2006, the Federal Election Commission found that there is reason to believe that you knowingly and willfully violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

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Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Marianne Abely, the staff attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures

Factual and Legal Analysis
Designation of Counsel Form
Procedures

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Robert Rubio

MUR: 5849

I. FACTUAL BACKGROUND

Bank of America Corporation (the "Bank") is a publicly held corporation headquartered in Charlotte, North Carolina. Bank of America N.A. is a wholly owned subsidiary of the Bank. The Bank's Los Angeles-based Student Banking Division employs about 160 individuals for the purpose of providing education financing and other banking services to students. At all times relevant to this matter, the division was managed by Senior Vice President, Kathleen Cannon. Cannon served as the division's senior vice president for twelve of the twenty-nine years she worked at the Bank, and in that capacity, directly supervised nine managers. It appears that Cannon had significant autonomy in running the division, due in part to frequent turnover among her direct supervisors.

Information obtained by the Commission in the course of carrying out its supervisory responsibilities indicates that the Bank reimbursed a total of \$8,200 in political contributions made by employees of the Student Banking Division. Cannon directly authorized \$7,100 of the reimbursements for managers, who reported directly to her. Two of Cannon's subordinate managers who reported directly to Cannon ("direct reports") authorized the reimbursement of the remaining \$1,100 for contributions made by employees who reported directly to them. One of these managers, Robert Rubio, Accounts and Production Support Manager, authorized the reimbursement of one \$600 federal political contribution made by one of his employees.

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1 On June 11, 2004, Cannon issued an e-mail solicitation inviting Rubio and seven other
2 direct reports and eighteen other Student Banking Division employees to a July 9, 2004
3 fundraising dinner to benefit Representative McKeon. After providing details regarding the
4 event, Cannon states in pertinent part "[t]he tickets can not be expensed as it is a contribution."
5 Rubio contributed \$300 to McKeon for Congress in response to Cannon's June 11th solicitation.
6 Rubio did not request reimbursement for his contribution and apparently stated that he had
7 recently developed concerns regarding the propriety of the practice and, therefore, did not
8 request that this contribution be reimbursed. Rubio reportedly said that he started having doubts
9 about the propriety of obtaining Bank reimbursement for contributions at some point in 2004
10 prior to receiving the June 11th e-mail solicitation from Cannon. Rubio was reportedly unable to
11 articulate exactly what caused him to have these doubts, but they were apparently serious enough
12 to prevent him from seeking reimbursement for his \$300 contribution to McKeon for Congress in
13 June 2004.

14 Despite his doubts about the practice, Rubio authorized the reimbursement of a \$600
15 contribution to McKeon for Congress made by his direct report, Dale Robertson, Senior
16 Technology Manager.¹ Rubio authorized this reimbursement after seeing Cannon's June 11,
17 2004 e-mail solicitation. Rubio reportedly was unable to state exactly why he approved this
18 reimbursement and instead provided varying explanations for his actions. At first, Rubio
19 reportedly said he could not recall the circumstances surrounding the authorization or whether he
20 discussed it with Robertson. Rubio apparently then said that although he had not discussed it
21 with Cannon, he assumed she had vetted and approved the request. Rubio also reportedly

¹ There is no information as to who solicited this contribution from Robertson, who was not a recipient of Cannon's June 11, 2004 e-mail.

1 contended that Robertson told him that Cannon "instructed Robertson to have the contribution
2 reimbursed" and, therefore, it "wasn't his decision."

3 **II. LEGAL ANALYSIS**

4 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits any
5 person from making a contribution in the name of another or knowingly permitting his or her
6 name to be used to make such a contribution. 2 U.S.C. § 441f. It is a violation of the Act to
7 knowingly help or assist any person in making a contribution in the name of another. 11 C.F.R.
8 § 110.4(b)(iii).

9 Therefore, it appears that Rubio violated 2 U.S.C. § 441f when he authorized the
10 reimbursement of Robertson's \$600 political contribution to McKeon for Congress. Further,
11 Rubio may have known that the reimbursement of political contributions was illegal when he
12 authorized this reimbursement. According to the available information, Rubio authorized this
13 reimbursement after seeing Cannon's June 11, 2004 e-mail solicitation, which stated "[t]he
14 tickets can not be expensed as it is a contribution."

15 Accordingly, the Commission finds reason to believe Robert Rubio knowingly and
16 willfully violated 2 U.S.C. § 441f.²

² The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkitt*, 916 F.2d 207, 214 (5th Cir. 1990). Taking steps to disguise the source of funds used in illegal activities may reasonably be explained as a "motivation to evade lawful obligations" and will also be considered evidence of knowing and willing behavior. *Id.* at 213-4 (citing *Ingram v. United States*, 360 U.S. 672, 679 (1959)).